Marquette Law Review

Volume 19
Issue 3 *April 1935*

Article 8

Radio: News Published: Unfair Competition

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the delegation was to a group which might presently exist or come into being at some future time. The California legislature adopted the National Industrial Recovery Act for the state of California and automatically made federally adopted codes California codes. Cal Stat. 1933, p. 2635 § 6. In a prosecution under the price setting clause of one of the codes the court held that a primary standard had been set and that delegating to a foreign body power to "fill in the details" did not violate the state constitution. *Ex parte Lasswell,* (Cal. App. 1934) 36 P. (2nd) 678. In the instant case there was no question of the delegation of power to "fill in the details" which has almost uniformly been upheld. See *Wayman* v. *Southard,* 10 Wheat. 1, 6 L.ed. 253 (1825). Undoubtedly a standard must be set before there can be an effective delegation of power to anyone to fill in the details of a legislative scheme. The slightest care in drafting the bill will enable the legislature to avoid the kind of difficulty presented in the instant case. Cousens, *The Delegation of Federal Legislative Power to Executive Officials* (1935) 33 MICH. L. REV. 512. It must be admitted that the reasoning in the instant case invalidating the chapter is unanswerable and it is only to be regretted that the court found it unnecessary to consider the more fundamental questions raised in the bill such as price fixing, undue discrimination under the anti-trust laws, and unwarranted interference with the right to carry on a lawful business in a lawful manner.

JOHN L. WADDLETON.

RADIO—NEWS PUBLISHED—UNFAIR COMPETITION.—The complainant appealed from an order procured on a motion by the defendant to dissolve a temporary restraining order in a suit by the complainant, a news gathering agency, to restrain a radio station from broadcasting news items published by some members of the association. The complainant is a corporation, its members being the proprietors or representatives of some twelve hundred newspapers published throughout the United States. The defendant conducts a radio station in Bellingham, Wash., and three times daily conducts "news broadcasts" by reading verbatim or paraphrasing the news from three of complainant's members' latest editions. The complainant contends that by so doing the defendant station is competing unfairly with some members of the association in that the defendant is appropriating to its own use and without the complainant's consent a service supplied by the association to its members. *Held,* motion dismissed. The broadcasting by the defendant of news published without compensation or direct profit therefor does not constitute competition by the defendant with the business of news-gathering and dissemination for profit by complainant. *Associated Press* v. *KVOS, Inc.,* 9 F. Supp. 279 (W.D. Wash. 1934).

The basis for relief on the doctrine of unfair competition was confined in the earlier cases to instances where there was some element of dishonesty in business, for example, where there was a conscious scheme to present the defendant's goods as those of the plaintiff, *Hanover Star Mill Co.* v. *Metcalf,* 240 U.S. 403, 60 L.ed. 713, 36 Sup. Ct. 357 (C.C.A. 5th, 1916); *Prest-O-Lite Co.* v. *Bournonville,* 260 Fed. 440 (D.C. N.J. 1914), or where the defendant had consciously sought to cause a client to break his contract with the defendant's competitor, *Board of Trade* v. *Christie Grain & Stock Co.,* 198 U.S. 236, 49 L.ed. 1031, 25 Sup. Ct. 637 (1905), or where the defendant, consciously intending to destroy the plaintiff's business, had palmed off upon its public his own vari-

ties of goods as the products of the plaintiff. *Fonotopia Limited* v. *Bradley,* 171 Fed. 951 (C.C.E.D. N.Y. 1909); *Prest-O-Lite Co.* v. *Davis,* 209 Fed. 917 (S.D. Ohio 1913).

In 1918 the Supreme Court chose to extend the scope of protecion afforded one of several business competitors against the others of the group, holding that no element of fraud was necessary to show unfair competition. *International News Service* v. *Associated Press,* 248 U.S. 215, 39 Sup. Ct. 68, 63 L.ed. 211, 2 A.L.R. 293 (1918). Both the litigants were engaged in the business of selling news, and the defendant was enjoined from selling, as its own, news taken from the bulletin issued by the complainant or from newspapers published by its members. The court, regarding news as quasi-property as between rival news agencies, apparently rested its decision on the fact that defendants practice constituted unfair competition in that there was appropriation without cost to itself of values created by the plaintiff. In 1913 the rule of the *International News* case, *supra,* was interpreted and extended so as to classify a news agency and a radio station as competitors. *Associated Press* v. *Sioux Falls Broadcast Ass'n.,* unreported (D.C. S.D. Mar. 14, 1933). The suit was brought to enjoin the radio station from broadcasting news allegedly "pirated" from a member newspaper. The facts of the case are similar to the instant case; the defense that plaintiff was also guilty of unfair competition was overruled and the District Court held that the defendant was guilty of unfair competition. The news published in the plaintiff's newspaper was found to be the "property" of the plaintiff for at least 24 hours after publication and the defendant was enjoined from broadcasting it during that time.

In the instant case, considering the subjective purpose of both corporations, viz., the making of profit through the medium of advertising, it hardly seems plausible that the court could find no unfair competition on the mere fact that the complainant's members receive a small fee for its newspaper while the radio station broadcasts gratuitously. The competition for advertising between the press and radio has been recognized by other courts. See *Sorenson* v. *Wood,* 123 Neb. 348, 243 N.W. 82 (1932); *Miles* v. *Louis Wasmer, Inc.,* 172 Wash. 466, 20 P. (2nd) 847 (1933). Unless the complainant failed to prove substantial damages or the court was over eager to protect public interest in the free distribution of news it seems contradictory to honest business to allow one without cost to reap the fruits of another's labors and thus create dangerous competition.

WILLIAM F. HURLEY.

INSURANCE—POLICIES—CONSTRUCTION OF TERMS.—Plaintiff beneficiary of a membership certificate in defendant fraternal beneficiary association sues to recover for the accidental death of the insured who was killed in a railway crossing collision. The trial court found the deceased negligent and denied recovery on the ground that the clause in defendant's constitution, which was made to apply to the contract, and which exempted the defendant from liability when the injuries were the result "of voluntary or unnecessary exposure to danger or to obvious risk of injury," controlled. On appeal, *Held,* judgment reversed; the word "or" in "voluntary or unnecessary exposure" must be construed conjunctively rather than disjunctively; "or" should be read as "and." *Vinograd* v. *Travelers' Protective Ass'n. of America* (Wis. 1935) 258 N.W. 787.

The instant case is the first one decided by a Wisconsin court on the subject. There seems also to be a dearth of authorities in other jurisdictions as to